

Jonathan M. Baum (SBN: 303469)  
**Steptoe LLP**  
One Market Street  
Steuart Tower, Suite 1070  
San Francisco, CA 94105  
Telephone: (510) 735-4558  
jbaum@steptoe.com

Reid H. Weingarten  
Brian M. Heberlig  
Michelle L. Levin  
Nicholas P. Silverman  
Drew C. Harris  
(Admitted Pro Hac Vice)

**Steptoe LLP**  
1114 Avenue of the Americas  
New York, NY 10036  
Telephone: (212) 506-3900

Christopher J. Morvillo  
Celeste L.M. Koeleveld  
Daniel S. Silver  
(Admitted Pro Hac Vice)  
**Clifford Chance US LLP**  
31 West 52nd Street  
New York, NY 10019  
Telephone: (212) 878-3437  
christopher.morvillo@cliffordchance.com

*Attorneys for Defendant  
Michael Richard Lynch*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
vs.  
  
MICHAEL RICHARD LYNCH and  
STEPHEN KEITH CHAMBERLAIN,  
  
Defendants.

Case No.: 3:18-cr-00577-CRB  
Judge: Hon. Charles Breyer

**DEFENDANT MICHAEL RICHARD  
LYNCH'S RENEWED MOTION *IN LIMINE*  
TO EXCLUDE IMPROPER SUMMARY  
WITNESS TESTIMONY**

Court: Courtroom 6 – 17<sup>th</sup> Floor  
Date Filed: May 15, 2024  
Trial Date: March 18, 2024

## I. INTRODUCTION

Earlier this evening, the Government provided a revised set of slides for the testimony of their summary witness, Special Agent Huebsch.

These slides appear very similar to the prior slide deck, with the following noticeable changes:

- **Fewer Total Slides:** While the prior “Short Form” slide deck from yesterday contained 10 slides (Q1 2009 to Q2 2011), the new deck contains only 5 slides (Q4 2009 to Q1 2011, but missing Q2 2010).
- **Chart “Legend” Removed:** The prior version of the slides included a “legend” on the bottom of each slide identifying the colors used on the bar charts as corresponding to “revenue,” “hardware,” “adjustments,” “failed deals,” and “post-cut-off-deals.” The new version removes the legend—and, with it, the problematic words the Court criticized—but keeps all the same colors on the bar chart, presumably to be explained in oral testimony.
- **Slightly Less Detail:** The new version of the slides contains slightly less detail. For instance, on the Q1 2010 slide, the prior version identified each of the “failed deals” by name, while the new version contains a large block of the same size in white, indicating the total amount of “failed deals,” but not breaking them out individually. Presumably, the deals that comprise these color blocks will also now be explained in oral testimony.

## II. ARGUMENT

Although the Government has made some cosmetic changes, it has not addressed the issue the Court noted. The new charts indicate the Government still intends to use its summary witness to offer improper quasi-expert testimony involving judgment and analysis beyond what is permitted from a lay witness under Rule 701(c).

These slide are also improper summary charts. Rule 1006 provides that summary charts may be used “to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in Court.” Mr. Hussain’s spreadsheets are certainly

1 voluminous, but the Government’s slides do not *summarize* them. Rather, the charts seek to  
2 communicate the Government’s *conclusions* about the contents of Mr. Hussain’s spreadsheets by  
3 *analyzing*<sup>1</sup> their contents and applying outside concepts, such as the “cut-off” date, the notion of  
4 “failed deals,” and the “consensus” number for Wall Street expectations in order to make  
5 specific points that are not directly related to the contents of Mr. Hussain’s spreadsheets.

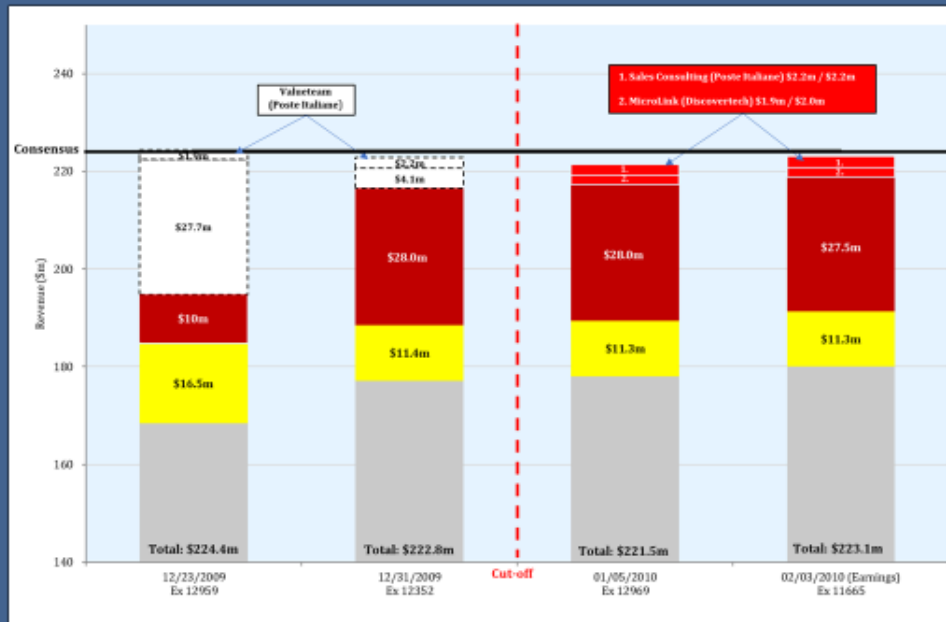
6 The outside concepts—including “failed deals,” “cut-offs,” and “consensus” numbers—  
7 that the slides seek to incorporate into their analysis of Mr. Hussain’s spreadsheets are not the  
8 kind of clear, unambiguous information that can be presented this way by a summary witness.  
9 Nuance and judgment abound in each of these seemingly neutral concepts. For instance, it is not  
10 at all obvious from Mr. Hussain’s spreadsheets which deals had “failed.” Different versions of  
11 Mr. Hussain’s spreadsheets were produced several weeks apart, and Mr. Hussain is not present to  
12 explain why he might have included some transactions on one version of the spreadsheet but not  
13 another. Similarly, testimony from Mr. Welham established that revenue can be fairly recognized  
14 after quarter-end if the parties have reached an agreement in principle before the close of the  
15 quarter, and then reduced it to writing after quarter end. A non-expert witness is not qualified to  
16 determine based only on dates of entries in Mr. Hussain’s spreadsheets whether a deal was  
17 backdated because it was listed after the “Cut-off.” Nor is a summary witness in a position to  
18 opine on whether “failed” or unclosed deals have been “replaced” with “deferred revenue.”

19 Here are two of the new slides, which are barely distinguishable from the prior version:  
20  
21  
22  
23  
24  
25  
26

---

27  
28 <sup>1</sup> The title of each slide—“SPREADSHEET ANALYSIS”—makes clear that the purpose of the  
slides is to analyze, not to summarize.

## Q4 2009 – SPREADSHEET ANALYSIS

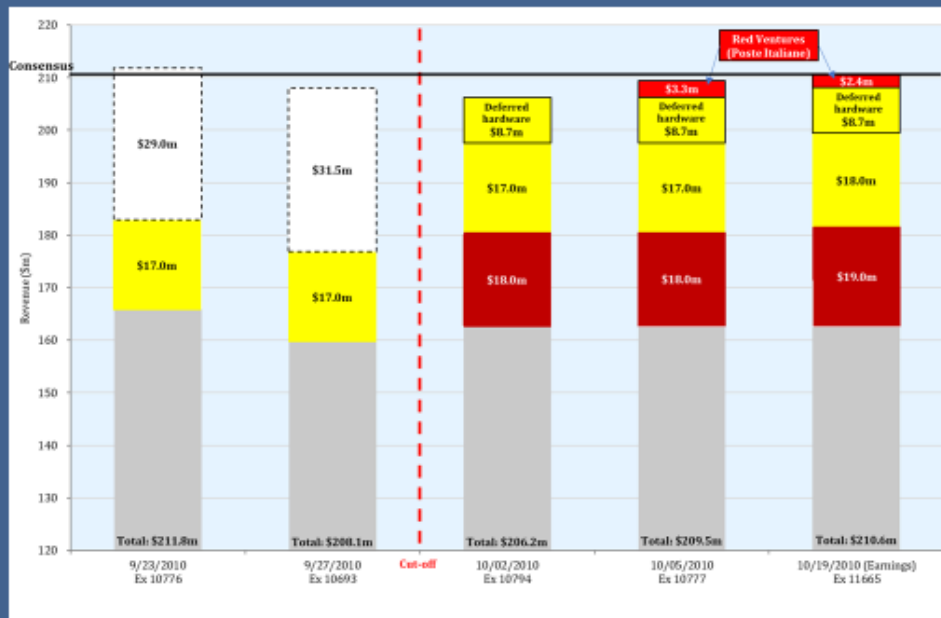


Consensus data: Ex 17482

The final bar is taken from Ex 11665 which reconciles to total revenue according to the Earnings Announcement. This bar is given the date of the Earnings Announcement (Ex 11491)

Note that the scale of the charts changes according to total revenue each quarter and the amount of detail highlighted

## Q3 2010 – SPREADSHEET ANALYSIS



Consensus data: Ex 17482

The final bar is taken from Ex 11665 which reconciles to total revenue according to the Earnings Announcement. This bar is given the date of the Earnings Announcement (Ex 1186)

Note that the scale of the charts changes according to total revenue each quarter and the amount of detail highlighted

1 As the Court can see, these slides are nearly as complex as the prior version. Simply removing  
2 the legend from the bottom of the chart, but leaving the colored sections of the bars to be  
3 explained in oral testimony, does not address the problem. The judgment and expertise needed to  
4 identify which transactions should be shaded white (for “failed deals”); which deals were  
5 finalized before a "cut-off" (and therefore impliedly backdated); and other similar conclusions  
6 are not proper testimony from a non-expert summary witness.

### 8 **III. CONCLUSION**

9 For the foregoing reasons, Dr. Lynch asks the Court to limit the scope of the testimony  
10 from the Government’s summary witness and to exclude the use of improper summary charts.

1 Dated: May 15, 2024

2 Respectfully submitted,

3  
4 By: /s/ Celeste L.M. Koeleveld  
Celeste L.M. Koeleveld

5  
6 Christopher J. Morvillo  
Celeste L.M. Koeleveld  
7 Daniel S. Silver  
(Admitted Pro Hac Vice)  
8 **CLIFFORD CHANCE US LLP**  
31 West 52nd Street  
9 New York, NY 10019  
10 Telephone: (212) 878-3437

11 Jonathan M. Baum (SBN: 303469)  
12 **STEPTOE LLP**  
One Market Street  
13 Steuart Tower, Suite 1070  
San Francisco, CA 94105  
14 Telephone: (510) 735-4558

15 Reid H. Weingarten  
16 Brian M. Heberlig  
Michelle L. Levin  
17 Nicholas P. Silverman  
Drew C. Harris  
18 (Admitted Pro Hac Vice)  
19 **STEPTOE LLP**  
1114 Avenue of the Americas  
20 New York, NY 10036  
21 Telephone: (212) 506-3900

22 *Attorneys for Defendant*  
23 *Michael Richard Lynch*  
24  
25  
26  
27  
28